

UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF WASHINGTON
AT TACOMA

COLOR ME HOUSE INC.,)	No.
)	
Plaintiff,)	COMPLAINT
)	
vs.)	JURY DEMAND
)	
DISCOVERY COMMUNICATIONS, INC.,)	
)	
Defendant.)	

Plaintiff, Color Me House Inc. ("Color Me House"), through its undersigned attorneys, alleges for its Complaint against Discovery Communications, Inc. ("Discovery"), as follows:

Nature of Action

1. This action seeks to redress and enjoin Discovery's infringement of Color Me House's registered trademarks.

Parties

2. Color Me House is a Washington corporation with its principal place of business located in Olympia, Washington. Color Me House is a home-based small business owned by Rhys and April McCray.

3. Discovery is a Delaware corporation with its principal place of business

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1 located in Silver Spring, Maryland. Discovery owns the Discovery Kids television network
2 (“Discovery Kids”), which sells children’s games and toys.

3 **JURISDICTION AND VENUE**

4 4. This action arises under the Lanham Act, 15 U.S.C. §§ 1051, *et seq.* This
5 Court has subject matter jurisdiction pursuant to 28 U.S.C. §§ 1331, 1332, and 1338(a); and
6 supplemental jurisdiction pursuant to 28 U.S.C. § 1367(a).

7 5. This Court has personal jurisdiction over Discovery because it engages in a
8 continuous and systematic course of doing business in Washington and/or has substantial
9 contacts with, transacts and solicits business in and/or has purposefully availed itself of the
10 privileges and benefits of doing business in the State of Washington. In particular, Discovery
11 broadcasts the “Discovery Kids” television network and advertises, markets, distributes, and
12 sells goods that infringe Color Me House’s trademark throughout Washington.

13 6. Venue is proper in this district pursuant to 28 U.S.C. §§ 1391(b) because
14 Discovery conducts business in and/or has substantial contacts with and/or may be found in
15 the Western District of Washington; a substantial portion of the events at issue have arisen
16 and/or will arise in this judicial district; and because Discovery is subject to personal
17 jurisdiction within this judicial district.

18 **GENERAL ALLEGATIONS**

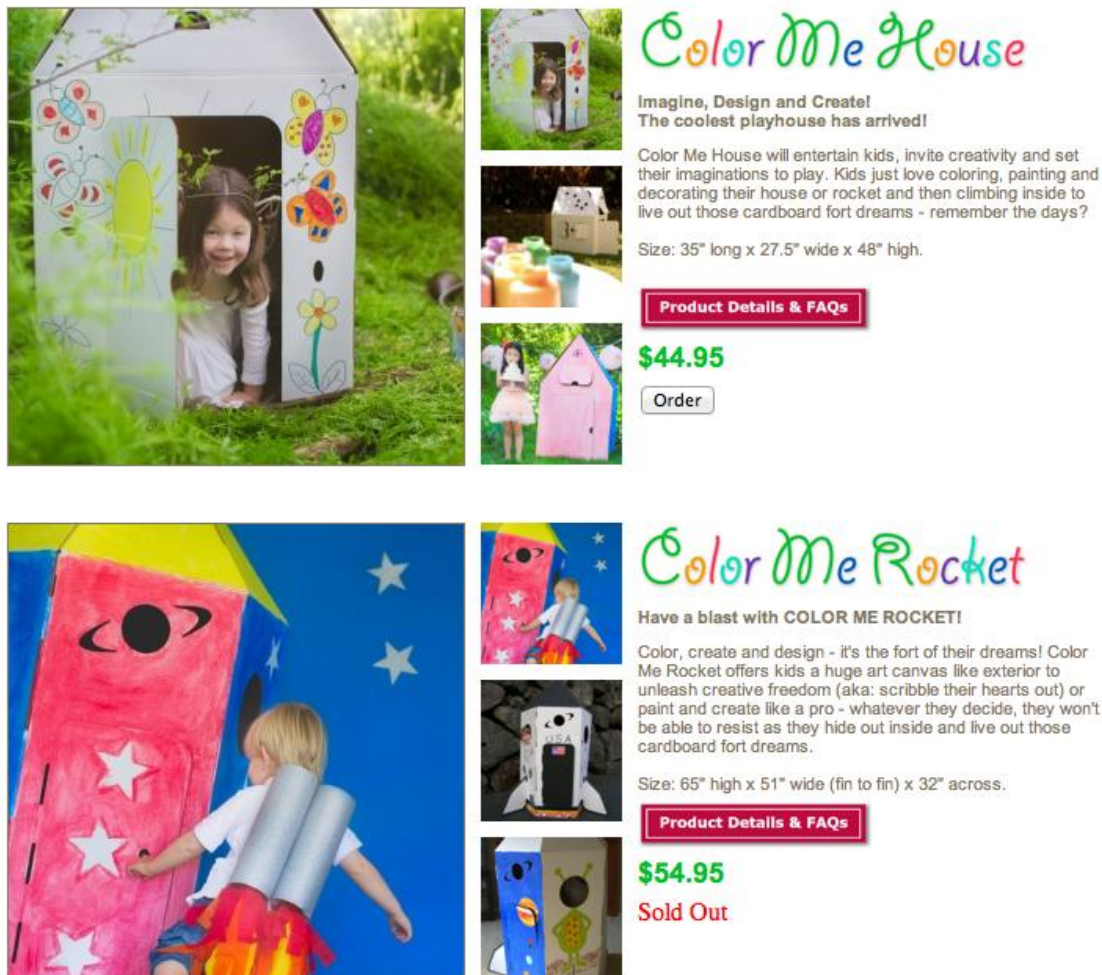
19 7. Color Me House is in the business of making children’s cardboard playhouses.

20 8. In June 2008, Color Me House began to advertise, market, distribute, and sell
21 cardboard playhouses under its COLOR ME HOUSE trademark. At that time, it also began
22 to advertise, market, distribute, and sell a rocket-shaped cardboard playhouse under its
23 COLOR ME ROCKET trademark. Both of Color Me House’s playhouses are made out of
24 high-quality cardboard. Its COLOR ME HOUSE playhouses typically retail for \$44.95; its
25 COLOR ME ROCKET playhouses typically retail for \$54.95.

26 9. Since 2008, Color Me House has sold its playhouses throughout the United

States through its website, *www.ColorMeHouse.com*, as well as through third-party retailers, such as Amazon.com, Overstock.com, Sears.com, and Costco.

10. Following are screen shots depicting its COLOR ME HOUSE and COLOR ME ROCKET trademarks from Color Me House's website (as of the date of the Complaint):



11. On July 20, 2010, the U.S. Patent and Trademark Office ("PTO") issued a federal registration to Color Me House for its COLOR ME HOUSE trademark (Reg. No. 3821356) in International Class 28 for "Play houses." That same day, the PTO also issued a federal registration to Color Me House for its COLOR ME ROCKET trademark (Reg. No. 3821358) in International Class 28 for "Play houses." The PTO registered both trademarks

1 on the Principal Register.

2 12. Sometime thereafter, Discovery began to advertise, market, distribute, and sell
3 competing cardboard playhouses under the COLOR ME PLAYHOUSE trademark. At that
4 time, it also began to advertise, market, distribute, and sell a competing rocket-shaped
5 cardboard playhouse under the COLORE ME ROCKETSHIP trademark. Both of
6 Discovery's playhouses are made out of light-quality cardboard. Its COLOR ME
7 PLAYHOUSE playhouses typically retail for \$24.68; its COLOR ME ROCKET playhouses
8 typically retail for \$40.00 – considerably less than the prices Color Me Playhouse charges for
9 its better-quality playhouses.

10 13. Discovery advertises, markets, distributes, and sells its competing COLOR ME
11 PLAYHOUSE- and COLOR ME ROCKETSHIP-branded playhouses on its website
12 (<http://kids.discovery.com/shop/>) and through third-party distributors such as Macy's, JC
13 Penny, Wal-Mart, and Bed Bath & Beyond.

14 14. Discovery also has advertised, marketed, distributed, and sold its competing
15 COLOR ME PLAYHOUSE- and COLOR MET ROCKETSHIP-branded playhouses through
16 some of the same third-party distributors that have distributed Color Me Rocket's COLOR
17 ME HOUSE- and COLOR ME ROCKET-branded playhouses, including Amazon.com,
18 Overstock.com, and Sears.com.

19 15. Locally, Discovery has sold its COLOR ME PLAYHOUSE- and COLOR ME
20 ROCKETSHIP-branded playhouses available at Kohl's department store in Olympia; Wal-
21 Mart in Lakewood, Tumwater, Tacoma, and Federal Way; JC Penney at the Southcenter Mall
22 in Tukwila and the Capitol Mall in Olympia; and Bed Bath & Beyond in Seattle, Puyallup,
23 and Olympia.

24 16. Following is a photograph depicting Discovery's COLOR ME PLAYHOUSE
25 trademark on its product packaging:
26



17. Following is a photograph depicting the product packaging for Discovery's COLOR ME ROCKETSHIP trademark:



18. Discovery's adoption of trademarks that closely resemble Color Me House's registered trademarks, for identical goods, has not been an accident. In 2010, for example,

Color Me House publicly announced its intent to start offering a castle-themed cardboard playhouse under the COLOR ME CASTLE trademark. Less than a year later, Discovery launched a competing castle-themed cardboard playhouse, which it advertised, marketed, distributed, and sold under the COLOR ME PLAY CASTLE trademark.

19. Following is a screen shot from Discovery's website depicting its COLOR ME PLAY CASTLE trademark (as of the date of the Complaint):



20. Not surprisingly, consumers have begun to experience actual confusion over the parties' trademarks in connection with identical types of goods. Consumers have complained to Color Me House about Discovery's playhouses, mistakenly believing that such playhouses were made by Color Me House.

CLAIMS

Count 1 – Infringement of Color Me House's Registered Trademark 15 U.S.C. §§ 1051, et seq.

21. Color Me House re-alleges the allegations set forth above.

22. COLOR ME HOUSE is a valid, enforceable, and registered trademark.

23. Color Me House's rights in and to COLOR ME HOUSE are prior and superior to Discovery's rights in and to COLOR ME PLAYHOUSE and COLOR ME PLAY CASTLE.

24. Similarly, Color Me House's rights in and to COLOR ME ROCKET are prior and superior to Discovery's rights in and to COLOR ME ROCKETSHIP.

25. As a registrant on the Principal Register, Color Me House is entitled to a legal presumption under 15 U.S.C. § 1072 that it is the exclusive nationwide user of COLOR ME HOUSE and COLOR ME ROCKET in connection with "Play houses."

26. Discovery's unauthorized use of COLOR ME PLAYHOUSE, COLOR ME PLAY CASTLE, and COLOR ME ROCKETSHIP in commerce in connection with the same goods reflected on Color Me House's federal registration for COLOR ME HOUSE and COLOR ME ROCKET is likely to cause confusion, mistake, or deception with the goods sold by Color Me House.

27. Such likelihood of confusion, mistake, or deception infringes Color Me House's superior trademark rights in COLOR ME HOUSE and COLOR ME ROCKET in violation of 15 U.S.C. § 1114(1).

28. Color Me House has been and will continue to be damaged by such likelihood of confusion, mistake, or deception in a manner that cannot be measured or compensated in economic terms. Discovery's actions have damaged and will continue to damage Color Me House's market share, reputation, and goodwill. Such irreparable harm will continue unless Discovery's acts are restrained or enjoined under 15 U.S.C. § 1116(a).

29. Discovery's acts also have damaged Color Me House in an amount to be proven at trial.

Count 2 – False Designation of Origin
(15 U.S.C. § 1125(a))

30. Color Me House re-alleges the allegations set forth above.

31. Discovery's unauthorized use of trademarks that copy identical or confusingly similar distinctive elements of Color Me House's trademarks in connection with the same goods constitutes a false designation of origin, false or misleading description and/or false and misleading representation. Such unauthorized use of those trademarks is likely to cause confusion, mistake or deception of others as to the affiliation, connection or association of Color Me House to Discovery's playhouses, and is likely to cause confusion, mistake or deception as to the origin, sponsorship or approval of the playhouses that Discovery sells.

32. Such false designations, descriptions and/or representations constitute unfair competition and infringe Color Me House's rights in its trademark in violation of 15 U.S.C. § 1125(a).

33. Color Me House has been and will continue to be damaged by such false descriptions, false representations, and false designations of origin in a manner that cannot be measured or compensated in economic terms. Discovery's actions have damaged and will continue to damage Color Me House's market, reputation, and goodwill. Such irreparable harm will continue unless Discovery's acts are restrained or enjoined.

34. Discovery's acts also have damaged Color Me House in an amount to be proven at trial.

Count 3 – Unfair Competition Under Washington Law
(RCW 19.86)

35. Color Me House re-alleges the allegations set forth above.

36. Discovery's unauthorized use of trademarks that copy identical or confusingly similar elements of Color Me House's trademarks in connection with the same goods in the United States constitutes an unfair method of competition and an unfair trade practice, which is damaging to the public interest in violation of the Washington Consumer Protection/Unfair Business Practices Act, RCW 19.86.020.

37. Discovery's unfair methods of competition occur in trade or commerce and

1 cause injury to Color Me House's business, including the loss of sales, customers, and
2 goodwill.

3 38. As a result of Discovery's unfair business practices, Color Me House has been
4 damaged in an amount to be proven at trial, and will be irreparably harmed if Discovery's
5 wrongful conduct is allowed to proceed.

6 39. Pursuant to RCW 19.86.090, Color Me House is entitled to its actual damages,
7 an injunction restraining Discovery's unfair competition, its attorney's fees, and exemplary
8 damages.

9 **JURY DEMAND**

10 40. Color Me House respectfully demands a trial by jury on all claims stated
11 herein.

12 **PRAYER FOR RELIEF**

13 WHEREFORE, Color Me House respectfully requests judgment as follows:

14 1. That the Court issue temporary, preliminary, and permanent injunctive relief
15 against Discovery, their officers, agents, representatives, servants, employees, attorneys,
16 successors and assigns, and all others in active concert or participation with Discovery be
17 enjoined and restrained from:

18 a. importing, distributing, advertising, marketing, or selling any playhouse
19 in the United States in connection with any trademark that is identical or confusingly similar
20 to Color Me House's COLOR ME HOUSE and COLOR ME ROCKET trademarks,
21 including an order for impoundment and destruction of any items in Discovery's possession
22 or control bearing infringing trademarks (including but not limited to COLOR ME
23 PLAYHOUSE, COLOR ME PLAY CASTLE, and COLOR ME ROCKETSHIP) pursuant to
24 15 U.S.C. §§ 1116 and 1118; or

25 b. assisting, aiding or abetting any other person or business entity in
26 engaging in or performing any of the activities referred to in subparagraph (a) above;

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2. That the Court enter an Order directing Discovery to file with this Court and serve on Color Me House's attorneys within thirty days after service of an injunction, a report in writing, under oath, setting forth in detail the manner and form in which Discovery has complied with the injunction;

3. That the Court enter an Order awarding Color Me House its actual damages, Discovery's profits, and exemplary damages pursuant to 15 U.S.C. § 1117 and RCW 19.86.090 in an amount to be determined at trial;

4. That the Court enter an Order awarding Color Me House its reasonable costs and attorney's fees;

5. That the Court enter an Order awarding Color Me House its pre- and post-judgment interest; and

6. That the Court grant such additional relief as it deems just and appropriate.

DATED this 25th day of October, 2012.

By _____
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